

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186552

DATE: August 26, 1976

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98626

MATTER OF: Massachusetts College of Pharmacy - Grant

DIGEST:

Bidder's failure to execute affirmative action certification as required by bid conditions does not require rejection of signed bid where bidder specifically agreed, in Bid Form furnished by grantee, to comply with affirmative action requirements as set forth in bidding requirements.

On April 1, 1976, the Massachusetts College of Pharmacy (College), Boston, Massachusetts, issued an invitation for bids for the renovation and expansion of its library. The project is to be partially funded by a grant administered by the Department of Health, Education and Welfare (HEW).

The solicitation contained a section entitled "BID CONDITIONS-AFFIRMATIVE ACTION REQUIREMENTS-EQUAL EMPLOYMENT OPPORTUNITY," which required bidders to commit themselves to either part I or part II of the bid conditions for each construction trade proposed to be used on the project. Part I involved a commitment to a local affirmative action plan known as the Boston Plan, while part II involved a commitment to various goals and specific steps set forth in the conditions. Part IV of the Bid Conditions stated that "failure to submit a Part I certification and/or a Part II affirmative action plan (or certification), as applicable, will render the bid nonresponsive." However, since the Boston Plan had expired on June 20, 1975, the Bid Conditions also advised that "all crafts are subject to the requirements of Part II."

Bids were opened on April 27, 1976. The low bidder was New Boston Construction Corporation (New Boston) at \$566,949. The second low bidder was Thomas Construction Corp. (Thomas) at \$581,787. By letter of May 18, 1976, Thomas contended to this Office that we should review the proposed award to New Boston. On May 21, 1976, award was made to New Boston.

Thomas alleges that New Boston's bid was nonresponsive because New Boston did not execute the certifications under part I or part II of the Bid Conditions and did not submit the alternate plan permissible under part II.

The IFB contained a "Bid Form" prepared by the College that was to be executed and submitted as part of the bid. The following was one of the provisions of the Bid Form:

"The Undersigned agrees to comply with the Affirmative Action Requirements Equal Employment Opportunity, Boston Plan, and the Schedule of Minimum Wages as set forth in the Bidding Requirements."

The Bid Form was signed by New Boston.

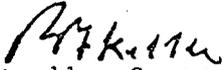
New Boston clearly failed to comply with the requirements in the bid conditions to submit executed certifications with its bid. As Thomas points out, we have held that a bidder does not commit itself to affirmative action requirements of a solicitation merely by signing the bid when the solicitation requires the bidder to sign either the part I or part II certification or file an alternate plan. Locascio Electric Co., Inc., B-181746, December 13, 1974, 74-2 CPD 338; 52 Comp. Gen. 874 (1973); 51 Comp. Gen. 329 (1971). HEW argues, however, that a different result is warranted here because of the Bid Form which the College included with the bid package and which New Boston signed and submitted with its bid. On the other hand, counsel for Thomas asserts that the Bid Form statement alone could not bind New Boston to the part II requirements because the Bid Form statement referred only to the "Boston Plan" and, unlike the part II certification, did not encompass subcontractors and work by the bidder on other projects in the Boston area.

We agree with HEW. The Bid Form contained New Boston's promise "to comply with the Affirmative Action Requirements Equal Employment Opportunity, Boston Plan * * * as set forth in the Bidding Requirements." The bidding requirements set forth the condition that all crafts were subject to part II of the affirmative action requirements. In our opinion New Boston's signature on the College Bid Form constituted its specific commitment to the affirmative action requirements of the invitation and therefore was sufficient to obligate it to comply with those requirements, notwithstanding the bidder's failure to sign the affirmative action certifications elsewhere in its bid. As we have often pointed out, the responsiveness of a bid to affirmative action requirements must be determined on the basis of whether the bidder has committed itself to those requirements, and not on whether the commitment has been made in the prescribed form. Veterans Administration re Welch Construction, Inc., B-183173, March 11, 1975, 75-1 CPD 146; Bartley, Inc., 53 Comp. Gen. 451 (1974), 74-1 CPD 1; B-177846, March 27, 1973; B-176260, August 2, 1972.

B-186552

We think it would be unreasonable to construe the reference to the "Boston Plan" in the Bid Form statement as limiting the bidder's commitment only to the Boston Plan (part I) portion of the bid conditions, particularly when the bid conditions made it clear that only a part II commitment would suffice to satisfy the affirmative action requirements. Accordingly, we cannot accept counsel's argument that the Bid Form committed bidders only to the inapplicable part I provisions. Furthermore, since the bid conditions clearly require applicability of affirmative action plan requirements to subcontractors and to other projects of the contractor, a bidder's commitment to the bid conditions by virtue of the Bid Form statement is sufficient to bind the bidder to those particular requirements as well as to all others in the bid conditions.

In view of the above, we find no basis for objecting to the award.


Acting Comptroller General
of the United States